

**CUSTOMER NO.: 38107  
EXPEDITED PROCEDURE**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                               |   |                     |
|-------------------------------|---|---------------------|
| In re application of          | ) | Examiner: Kai RAJAN |
| Rolf NEUMANN                  | ) |                     |
|                               | ) | Art Unit: 2831      |
| Serial No.: 10/596,111        | ) |                     |
|                               | ) | Confirmation: 2170  |
| Filed: March 6, 2007          | ) |                     |
|                               | ) |                     |
| For: <b>MEDICAL MEASURING</b> | ) |                     |
| <b>DEVICE</b>                 | ) |                     |
|                               | ) |                     |
| Date of Last Office Action:   | ) |                     |
| December 4, 2008              | ) |                     |
|                               | ) |                     |
| Attorney Docket No.:          | ) | Cleveland, OH 44114 |
| PHDE030400US / PKRZ 2 01359   | ) | January 27, 2009    |

**CONDITIONAL PETITION FOR WITHDRAWAL  
OF THE FINALITY OF THE OFFICE ACTION OF  
DECEMBER 4, 2008 (MPEP § 706.07(a),(c),(d),(e))**

Mail Stop: AF  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

If the Examiner denies the applicant's request to withdraw the premature *Finality* of the December 4, 2008 Office Action in Amendment C filed herewith, the applicant hereby Petitions for withdrawal of the *Finality* of the December 4, 2008 Office Action.

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I certify that this **CONDITIONAL PETITION FOR WITHDRAWAL OF THE FINALITY OF THE OFFICE ACTION OF DECEMBER 4, 2008 (MPEP § 706.07(a),(c),(d),(e))** and accompanying documents in connection with U.S. Serial No. **10/596,111** are being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

January 28 2009  
Date

Patricia A. Heim  
Patricia A. Heim

**DEPOSIT ACCOUNT**

The Patent Office is authorized to charge any fees associated with this filing to our deposit account no. **14-1270**

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In the Office Action of June 3, 2008, the Examiner rejected independent claim 16 under 35 U.S.C. § 102 as being anticipated by either Shulze (US 6,893,396) or Khair (US 2002/0109621).

In Amendment B of August 29, 2008, claim 16 was *not* amended. Rather, the applicant requested reconsideration of the rejection of independent claim 16.

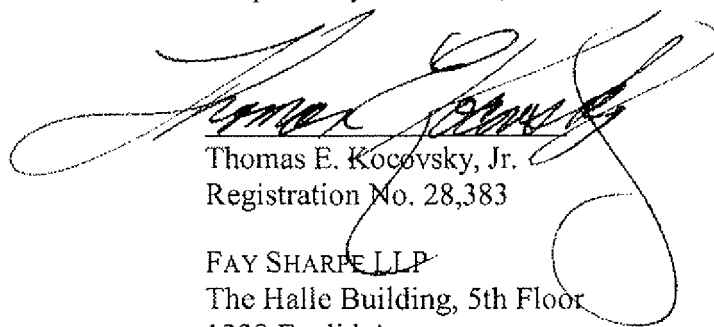
In the Office Action of December 4, 2008, the Examiner responded to the request for reconsideration of the rejection of claim 16 by withdrawing the prior rejections and making a new ground of rejection.

Because claim 16 was not amended, it is submitted that the citation of a new ground of rejection was not necessitated by the preceding Amendment B. Because the new ground of rejection applied against independent claim 16 was not necessitated by the applicant's response, it is submitted that the *Finality* of the December 4, 2008 Office Action is premature and should be withdrawn.

With the withdrawal of the *Finality* of the December 4, 2008 Office Action, the present amendment should be entered.

Applicants hereby request that the *Finality* of the December 4, 2008 Office Action be withdrawn and that Amendment C be entered.

Respectfully submitted,



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